

## **Presentation, Discussion, and Approval of the Review Committee's Report to Congress for 2008, as required by 25 U.S.C. 3006 (h)**

### **Discussion of the Review Committee's Report to Congress for 2008**

At the Seattle, WA meeting, Ms. Atalay and Mr. Goodman were appointed to the subcommittee to draft the Review Committee's report to Congress for 2008. Ms. Atalay acknowledged the efforts of Mr. Goodman, who was absent from the meeting due to illness. Ms. Atalay reviewed the draft report, which encompassed the Review Committee's activities and progress through calendar year 2008. The report also contains a section describing various barriers encountered in the NAGPRA implementation process, as well as possible solutions. These barriers include the large number of human remains and associated funerary objects classified as culturally unidentifiable, the considerable costs associated with NAGPRA compliance, the necessity of completing the three reserved regulation sections, the lack of adequate information on the status of Federal agency compliance, the need for increased funding for the resolution of outstanding civil penalty investigations, and the lack of a uniform Federal policy on reburial on Federal lands.

Ms. Atalay summarized the four main recommendations of the draft Review Committee report to Congress for 2008, which include:

1. Increasing funding for grants to Indian tribes, Native Hawaiian organizations, and museums, while funding each Federal agency's compliance requirements in the amount requested by the administration.
2. Meeting with museums and Federal agencies with large CUI inventories, as well as tribes that are possible descendants, at upcoming meetings as a way to better understand the problems encountered with large CUI holdings.
3. Developing and adopting a uniform reburial policy on Federal lands in consultation with Federal agencies, Indian tribes, and Native Hawaiian organizations.
4. Amending the definition of "Native American" at 25 U.S.C. 3001 (9) by adding the words "or was" so that it reads: "Native American" means of, or relating to, a tribe, people, or culture that is or was indigenous to the United States."

Ms. Worl recommended including a summary report of disputes heard by the Review Committee and their subsequent resolution. Ms. Hutt stated that information on each dispute, the recommendation of the Review Committee, any published notice, and any grants awarded in order to fulfill the recommendations would be available. However, the National NAGPRA Program does not have the authority to conduct the proposed follow-up survey, nor does the National NAGPRA Program have the authority to inquire about post-Federal Register notice activities or transfers.

Mr. Wright, Jr., stated it was important that the report include the number of human remains in the culturally unidentifiable database in the report and recognize that the number continues to increase. Ms. Atalay stated that having the input of tribes on the barriers they have encountered in NAGPRA implementation would be valuable for future reports to reports to Congress.

### **Review Committee Motion**

Mr. Wright, Jr., made a motion to approve the Review Committee's report to Congress for 2008, subject to the recommendations offered by the Review Committee members during their discussion at the meeting. Ms. Worl seconded the motion. The motion was adopted unanimously.

### **Review Committee Motion**

Mr. Wright, Jr., made a motion that the Review Committee reaffirm its support to amend the definition of "Native American" at 25 U.S.C. 3001 (9) by adding the words "or was" so that it reads: "Native American" means of, or relating to, a tribe, people, or culture that is or was indigenous to the United States." Ms. Worl seconded the motion. The motion was adopted unanimously.

Once completed, the 2008 report to Congress (and past reports) can be found on the National NAGPRA Program website at: [http://www.nps.gov/history/nagpra/REVIEW/Reports\\_to\\_Congress/RTC\\_Index.htm](http://www.nps.gov/history/nagpra/REVIEW/Reports_to_Congress/RTC_Index.htm)

### **Discussion of the Review Committee's Report to Congress for 2009**



1        PRESENTATION, DISCUSSION, AND APPROVAL OF THE  
2        REVIEW COMMITTEE'S REPORT TO CONGRESS FOR 2008, AS  
3        REQUIRED BY 25 U.S.C. 3006 (h)  
4        DISCUSSION OF 2008 REPORT TO CONGRESS

5            DAN MONROE: Let's move to a discussion of the  
6        report to Congress, and we had hoped to be able to  
7        make copies and pass this out but I think that we  
8        should go ahead and have the discussion. Perhaps  
9        you could just give us a summary of the report as  
10       it stands. And as a part of this discussion, I  
11       also want to make sure that we discuss the recent  
12       hearings held on NAGPRA by Congressman Rahall and  
13       the -- who is the Chair of the House Natural  
14       Resources Committee.

15           SONYA ATALAY: Sure. Thank you. Well, I'd  
16       like to begin by giving acknowledgement to my  
17       colleague and fellow Review Committee member, Alan  
18       Goodman, who couldn't be here today because he is  
19       sick. But we worked on this report together and I  
20       have to say that I'll be relying on my fellow  
21       Review Committee members for a lot of input on the  
22       final version of this report because I actually --  
23       the report to Congress is for 2008 and I actually  
24       didn't serve on the committee in 2008. So it  
25       became a little difficult to write a report that I

1        wasn't serving on the committee, but I was able to  
2        go back and get a lot of documentation from the  
3        excellent records that were already there. So I  
4        will ask, of course, for input and discussion as I  
5        go through this. I hope that it's comprehensive  
6        but I'm sure there will be more input that we could  
7        add to this.

8                So the report begins with just an introduction  
9        of NAGPRA and the legislation itself. We move on  
10       to talk about Review Committee activities,  
11       specifically the meetings that were held and where  
12       they were held in 2008, and I should just say that  
13       this is not a fiscal year report, it's a year  
14       report for the year of 2008. We then talk about  
15       the members who were on the committee and who was  
16       nominated and that the membership for the committee  
17       remained the same for the year 2008.

18               We move on to talk about the activities of the  
19       committee. Specifically I called attention here to  
20       the states that had cultural - disposition of  
21       culturally unidentifiable human remains,  
22       recommendations that came before the committee.  
23       And those states were, for 2008, Arizona, Colorado,  
24       Kentucky, Michigan, Nebraska, Tennessee,  
25       Washington, and West Virginia.



1           We then talk about here further activities,  
2           which were consulting on 43 CFR 10.7, the proposed  
3           regulations for unclaimed cultural items at the  
4           October meeting. And many of these items I'm going  
5           through them quite quickly because they have been  
6           detailed elsewhere. You can also find very  
7           detailed information about these in the fiscal year  
8           report that Sherry Hutt and others on the staff had  
9           put together, and those are available on the  
10          website.

11          SHERRY HUTT: Right.

12          SONYA ATALAY: We then go on to talk about –  
13          make sure that I have this in the right order, the  
14          progress that was made on NAGPRA during 2008,  
15          specifically drawing attention again to information  
16          that can be found in fiscal year reports 2008 and  
17          2009, speaking of the number of inventory  
18          completions that were made – and these are  
19          repetitions, so I won't go into the numbers unless  
20          you would like me to or if others would like to  
21          hear these – the number of summaries that were  
22          completed, also calling attention to the progress  
23          made with the culturally unidentifiable individuals  
24          database. There were 2,321 remains thus far that  
25          have been affiliated and removed from the CUI

1 database. So I wanted to – I thought it was  
2 important that we call attention to the usefulness  
3 of the CUI database and – for affiliating remains.

4 We then move on to talk about the barriers  
5 that have been encountered, specifically talking  
6 about an issue that's come up several times in  
7 front of this committee. Yesterday and today we  
8 discussed the issue of culturally unidentifiable  
9 human remains, remains that have been labeled as  
10 such, and call for further consultation that needs  
11 to be done in order to try to move more of those  
12 individuals into the affiliated category. Of  
13 course, this is going to – we recognize that this  
14 will take funding as we've seen from these  
15 dispositions how extensive the documentation is  
16 that you see in these binders that we read through  
17 and what we – we're just reading and we're  
18 discussing them here in two-day meetings, but from  
19 the extensive nature of the material that's in here  
20 for each and every one of the dispositions we  
21 discussed there's a lot of money and time that  
22 needs to go into those. So for that, we discussed  
23 the need for further funding. And that's in one of  
24 our recommendations but it's also spoken of in the  
25 Barriers Encountered section of the report.



1           We also talk about the importance of civil  
2 penalties, and as we heard from Sherry Hutt in her  
3 fiscal year report yesterday that we - the backlog  
4 is being addressed for civil penalties but that we  
5 feel that it's important to increase the funding  
6 for that as much as possible because this is an  
7 important part of NAGPRA compliance and an  
8 important part of the legislation.

9           We then move on to talk about recommendations  
10 for a uniform policy of reburial on Federal lands,  
11 that this is an issue that has come up and that  
12 we're discussing this as well, not just in the  
13 Barriers Encountered but as one of the  
14 recommendations that the committee is making.

15           So the final section of the report, we have  
16 four recommendations that we've made, two of which  
17 I've already spoken of. The cost to comply with  
18 NAGPRA, we discuss recommendations for at least 4.1  
19 million dollars in grants to Indian tribes, Native  
20 Hawaiian organizations and museums for the reasons  
21 that we outlined earlier in the Barriers  
22 Encountered section. And we discuss - and this was  
23 something that came up at the Seattle meeting this  
24 year in May was having a meeting with museum and  
25 Federal agencies that have large culturally

1       unidentifiable human remain inventories as a way to  
2       better understand the problems that are encountered  
3       by those museums and Federal agencies, and with the  
4       tribal communities that are possible descendants of  
5       those remains. So that was the second of our  
6       recommendations.

7       The third which I've already mentioned,  
8       development of a reburial policy, and the fourth is  
9       to revisit the issue of definition of Native  
10      American. We're strongly recommending that  
11      Congress amend the definition of Native American by  
12      adding the words "or was" so that it reads "Native  
13      American means of or relating to a tribe, people or  
14      culture that is or was indigenous to the United  
15      States."

16      That concludes my overview of the report.

17      DAN MONROE: Thank you. Comments?

18      ROSITA WORL: Mr. Chair, I would like to - and  
19      maybe it's in there and I might have missed it, but  
20      if we could have a section in there on a summary of  
21      the disputes and the final outcome of those  
22      disputes, have those disputes been settled, how  
23      many have - are still not resolved, how many might  
24      have gone to court, and it's one of the areas that  
25      I've - that has been of concern to me. And you



1 because of that terminology. But I guess, you  
2 know, as we work through this process it would be  
3 interesting to know how these museums in completing  
4 inventories and when they completed the affiliation  
5 on a lot of these collections, you know, when did  
6 that occur, because I know that after 1990 a lot of  
7 that happened.

8 **REVIEW COMMITTEE MOTION**

9 MERVIN WRIGHT, JR.: And the only other comment  
10 that I had on the report was with regard to the  
11 legislation, the amendment, the definition of  
12 Native American "or was," I know that the Review  
13 Committee affirmed its support for that legislative  
14 fix and I would like to see if we would reaffirm  
15 that at this point.

16 ROSITA WORL: Second.

17 DAN MONROE: So we have a motion and a second  
18 to reaffirm. Any discussion?

19 All in favor say aye.

20 SONYA ATALAY: Aye.

21 DONNA AUGUSTINE: Aye.

22 ERIC HEMENWAY: Aye.

23 DAN MONROE: Aye.

24 ROSITA WORL: Aye.

25 MERVIN WRIGHT, JR.: Aye.